

ASSEMBLY BILL

No. 261

Introduced by Assembly Member Maddox

February 4, 2003

An act to amend Sections 11352.1 and 101070 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 261, as introduced, Maddox. Controlled substances: dispensing or furnishing without a license.

(1) Existing law provides that any person who knowingly and unlawfully dispenses or furnishes a dangerous drug or dangerous device, or who knowingly owns, manages, or operates a business that dispenses or furnishes a dangerous drug or dangerous device, without a license to dispense or furnish these products, is guilty of a misdemeanor, punishable as specified.

This bill would instead make a violation of the above provision a misdemeanor or a felony. By providing for the prosecution of the offense as a felony with its attendant prosecutorial costs, this bill would impose a state-mandated local program.

(2) Existing law authorizes a local health officer who determines that a person within his or her jurisdiction is unlawfully dispensing or furnishing specified drugs requiring a prescription, a dangerous drug or device, or a controlled drug, to take specified action, including the immediate closure of a business upon a reasonable suspicion that the business poses an immediate threat to the public health, welfare, or safety, as defined.

This bill would declare that nothing in that provision shall be construed to diminish the authority of local law enforcement to enforce

any criminal law relating to the unlawful dispensing or furnishing of controlled substances.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11352.1 of the Health and Safety Code
2 is amended to read:
3 11352.1. (a) The Legislature hereby declares that the
4 dispensing and furnishing of prescription drugs, controlled
5 substances, and dangerous drugs or dangerous devices without a
6 license poses a significant threat to the health, safety, and welfare
7 of all persons residing in the state. It is the intent of the Legislature
8 in enacting this provision to enhance the penalties attached to this
9 illicit and dangerous conduct.
10 (b) Notwithstanding Section 4321 of the Business and
11 Professions Code, and in addition to any other penalties provided
12 by law, any person who knowingly and unlawfully dispenses or
13 furnishes a dangerous drug or dangerous device, or any material
14 represented as, or presented in lieu of, any dangerous drug or
15 dangerous device, as defined in Section 4022 of the Business and
16 Professions Code, or who knowingly owns, manages, or operates
17 a business that dispenses or furnishes a dangerous drug or
18 dangerous device or any material represented as, or presented in
19 lieu of, any dangerous drug or dangerous device, as defined in
20 Section 4022 of the Business and Professions Code without a
21 license to dispense or furnish these products, shall be guilty of a
22 misdemeanor *or a felony*. Upon the first conviction, each violation
23 shall be punishable by imprisonment in a county jail not to exceed
24 one year *or by imprisonment in the state prison*, or by a fine not to
25 exceed five thousand dollars (\$5,000), or by both that fine and
26 imprisonment. Upon a second or subsequent conviction, each
27 violation shall be punishable by imprisonment in a county jail not



1 to exceed one year *or by imprisonment in the state prison*, or by a
2 fine not to exceed ten thousand dollars (\$10,000), or by both that
3 fine and imprisonment.

4 SEC. 2. Section 101070 of the Health and Safety Code is
5 amended to read:

6 101070. (a) (1) The Legislature hereby finds and declares
7 that the dispensing or furnishing of drugs requiring a prescription
8 pursuant to Section ~~11470~~ 111470, a controlled substance as
9 defined in Section 4021 of the Business and Professions Code, or
10 a dangerous drug or a dangerous device as defined in Section 4022
11 of the Business and Professions Code, without a license poses a
12 significant threat to the public health, safety, and welfare of all
13 residents of the state. In recent years, the public has become
14 increasingly exposed to a proliferation of persons who engage in
15 these illegal or dangerous acts.

16 (2) The Legislature further finds and declares that
17 extraordinary measures are needed to control this burgeoning
18 problem. Therefore, the occasional enlistment of local health
19 officers in regulatory and enforcement functions normally
20 reserved to the state is appropriate and necessary in order to protect
21 the health, safety, and welfare of all persons of this state.

22 (3) Notwithstanding the foregoing, nothing contained in this
23 section shall be construed as limiting or supplanting the authority
24 of the state agencies charged with the regulation of the practice of
25 pharmacy.

26 (b) Whenever a local health officer determines that there exists
27 in his or her jurisdiction any person who, without a license, is
28 dispensing or furnishing drugs requiring a prescription pursuant to
29 Section 111470, a controlled substance as defined in Section 4021
30 of the Business and Professions Code, or a dangerous drug or a
31 dangerous device as defined in Section 4022 of the Business and
32 Professions Code, the local health officer may take action against
33 ~~such~~ that person. This action shall include, but not be limited to:

34 (1) Receiving and investigating complaints from the public,
35 from other licensees or from health care facilities that a person is
36 engaging in any or all of the activity set forth in this subdivision.
37 In conducting any investigation pursuant to this paragraph, the
38 local health officer shall have the assistance of, and be
39 accompanied by, a licensed pharmacist. The local health officer
40 shall provide the Board of Pharmacy, and any other state agency

1 charged with jurisdiction over the activity set forth in this
2 subdivision, with a copy of all complaints received pursuant to this
3 paragraph.

4 (2) Issuing an order to the person to immediately cease and
5 desist from the unlawful activity described in this subdivision,
6 after confirming that the person is engaging in any or all of the
7 activity set forth in this subdivision, and determining that the
8 person has not been convicted of engaging in that activity pursuant
9 to Section 11352.1 or any other applicable provision of law. In
10 issuing the order, the local health officer shall notify the person
11 that the activity is illegal in the State of California. In the event the
12 local health officer determines that any or all of the items described
13 in this subdivision must be confiscated, in addition to the cease and
14 desist order, the local health officer shall enlist the aid of local law
15 enforcement to execute confiscation of those items.

16 (3) Order the closure of the business, if any, operated,
17 managed, or owned by the person after confirming that the person
18 is engaging in any or all of the activity set forth in this subdivision,
19 and determining whether the person has previously been convicted
20 of engaging in that activity pursuant to Section 11352.1 or any
21 other applicable provision of law. If the public health officer has
22 a reasonable suspicion that the operation of a business poses an
23 immediate threat to public health, welfare, or safety, the business
24 may be ordered closed immediately while the hearing described in
25 subdivision (c) is pending. Immediate danger to the public health,
26 welfare, or safety includes, but is not limited to, evidence that the
27 person is providing, selling, or distributing drugs that require a
28 prescription, or dangerous drugs, devices, or controlled substances
29 without a license. In the event that the local health officer
30 determines that any or all of the items described in this subdivision
31 must be confiscated in addition to the closure of the business, that
32 officer shall enlist the aid of local law enforcement to execute the
33 confiscation of those items.

34 (c) (1) Any person engaging in any or all of the activity
35 described in subdivision (b) whose business is closed as a result of
36 action by local health officer pursuant to subdivision (b) shall be
37 entitled to a hearing to show cause why the closure was
38 unwarranted.

39 (2) Whenever a local health officer orders the closure of a
40 business pursuant to subdivision (b), the local health officer shall

1 immediately issue to the owner a notice setting forth the acts or
2 omissions with which the owner is charged, specifying the
3 pertinent code section, and informing the owner of the right to a
4 hearing, if requested, to show cause why the business should not
5 be closed.

6 (3) A written request for a hearing shall be submitted by the
7 person to the local health officer within 15 calendar days of
8 closure. A failure to request a hearing within 15 calendar days of
9 closure shall be deemed a waiver of the right to a hearing.

10 (4) The hearing shall be held within 15 calendar days of the
11 receipt of a request for a hearing; however, when circumstances
12 warrant, the hearing officer may order a hearing at any reasonable
13 time within this 15-day period to expedite the hearing process.
14 Upon written request of the person, the hearing officer may
15 postpone any hearing date, if circumstances warrant the
16 postponement.

17 (5) The hearing officer shall issue a written notice of decision
18 to the person within five working days following the hearing. In
19 the event the hearing officer determines that the closure was
20 warranted, the notice shall specify the acts or omissions with
21 which the person is charged, and shall state that the business shall
22 remain closed permanently. Evidence that the person engaged in
23 any or all of the activity set forth in subdivision (b) shall constitute
24 prima facie evidence that permanent closure is warranted. Any
25 business still operating shall close immediately upon receipt of the
26 written decision ordering closure.

27 *(d) Nothing in this section shall be construed to diminish the*
28 *authority of local law enforcement to enforce any criminal law*
29 *relating to the unlawful dispensing or furnishing of controlled*
30 *substances, including, but not limited to, Section 11352.1.*

31 SEC. 3. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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